IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20-11-2007

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THE HONOURABLE MR.JUSTICE M.CHOCKALINGAM

W.P.No.4222 of 2007
and
MP Nos.1 and 2 of 2007

The Thirumagal Mills ltd.,
Post Box No.1,
Katpadi Road
Gudiyattam 632 602. .. Petitioner

vs

1.The Deputy Chief Inspector of
Factories
Division II
Vellore
2.A.B.Babu .. Respondents

Writ petition filed under Article 226 of the Constitution of India praying for a writ of certiorari to call for the records of the order of the first respondent in Proceedings No.m/5062/2006 dated 1.12.2006 and quash the same.

For Petitioner : Mr.R.Parthiban
For Respondents : Mr.S.Gopinathan
Additional Government
Pleader for R1
Mr.S.T.Varatharajulu for R2

ORDER

Challenge is made to an order of the first respondent made in Proceedings No.m/5062/2006 dated 1.12.2006, by way of this writ petition for a writ of certiorari.

2.The second respondent herein made an application before the first respondent namely the Deputy Chief Inspector of Factories, Division II, Vellore, stating that he has got to be declared as a permanent employee of the writ petitioner Company. On enquiry, the first respondent passed an order declaring that he has acquired permanent status, which is the subject matter of challenge before this Court.

3.The affidavit in support of the writ petition and the affidavit in support of the vacate stay petition filed by the second respondent, are perused. The Court heard the learned Counsel on either side.

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4.The case of the second respondent while he made an application for permanent status, was that he joined the writ petitioner establishment in the year 1995; that he was working continuously as an employee in Quality Control Section; that in 24 calendar months from 24.2.1995 to 23.2.1997 he worked for 628 days; that number of employees who joined with him, have been regularized long back; but, he was not given so; and that under the circumstances, it became necessary that a direction has got to be issued to the management to regularize his services.

5.The application was resisted by the writ petitioner company stating that the application could not be sustained in view of the provisions of the Tamil Nadu Industrial Establishments (conferment of permanent status) Act, 1981; that he joined the petitioner company only as an apprentice in the month of February 1995; that an apprentice was only a learner who was given nominal allowance during the period of his learning; that he was never an employee or recognized as an employee at any point of time; that he has also absented himself from duty for a longtime; that pursuant thereto, his services were also terminated; that since he was not an employee, he should not be given permanent status, and hence, the application was to be dismissed.

6.After making an enquiry and in appraisement of the materials available, the application was ordered by the lower authority which the petitioner company challenged before this Court.

7.In support of the writ petition, the learned Counsel for the petitioner would submit that the second respondent was only an apprentice; that even in the application given by him, he has put his designation only as apprentice; that as per the Standing Orders, he has also been certified as apprentice; that at no stretch of imagination, the apprentices could be considered as employees; that it is also made clear in so may labour enactments; that the Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981, defines a workman as a person employed in any industrial establishment to do any skilled or unskilled, manual, supervisory, technical or clerical work for hire or reward, whether the terms of employment be expressed or implied, but does not include any such person; that in the instant case, he was only an apprentice when joined the service; that he continued to be so till his services were terminated; that it is also pertinent to point out that due to the long absence and that too, even without any permission or leave, his services were terminated; that he has also challenged the same before the Labour Court; that the proceedings were also pending; that since he joined only as apprentice, in view of the provisions of the Act, he cannot be conferred as a permanent employee; that the lower authority has neither considered the position both factual and legal, but has ordered the application, and hence, it has got to be quashed.

8.In support of his contentions, the learned Counsel for the petitioner relied on a decision of this Court reported in 1985 II-LLJ 376 (METAL POWDER CO. LTD. AND ANOTHER V. THE STATE OF TAMILNADU AND ANOTHER).

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9.In answer to the above, the learned Counsel for the second respondent would submit that it is not correct to state that the second respondent joined as an apprentice; that it is true that in the application, his designation is shown as apprentice; but, the very application would clearly reveal that he is eligible for bonus, medical benefit namely ESI, P.F. and gratuity; that needless to say that as far as the apprentice is concerned, he is not eligible for all those benefits; that though his designation is shown as apprentice, he was never treated as apprentice; but, he was working as Skilled Supervisor in the "Quality Control Section; that apart from that, he was working from 1995 onwards; that even as per the provisions of the Act, a person could be allowed to do skilled work for one year and to do unskilled work for three years; that for more than this period, a person cannot be kept as an apprentice; that in the instant case, he has been working there for more than a decade; that under the circumstances, it would be futile on the part of the petitioner to state that he was only an apprentice and not a permanent employee; that added circumstance is the termination of his services by the management; that this was adding factor in favour of the second respondent; that in such circumstances, the lower authority was perfectly correct in giving permanent status to him, and hence, the writ petition has got to be dismissed.

10.The Court paid its anxious consideration on the submissions made, and is of the considered opinion that the writ petition does not carry any merit whatsoever. The only question that was posed before the authority below namely the first respondent, was that whether the second respondent could be given the status of permanent employee or not so. Concededly, the second respondent joined the service of the writ petitioner company in 1995, and he was there for more than 10 years. The contention put forth by the petitioner's side that he is not a permanent employee, but only an apprentice, has got to be discarded for more reasons than one. Admittedly, he has been in service for the past 10 years. The only material available for the petitioner to state that he was only an apprentice is the application wherein his designation is found as apprentice. But, it is pertinent to point out that he has been in service for more than 10 years. Even as per the provisions of the Act, a person can be kept as an apprentice in a skilled labour for a period of one year and in the unskilled labour for a period of three years. But, in this case, there was no justification for the petitioner company to keep a person like the second respondent, as an apprentice for more than 10 years, and hence, the circumstances warranted for making a comment by the lower authority as unfair labour practice. Even from the application now relied on by the petitioner's side, it would be quite clear that he was eligible for bonus, medical benefit, PF, etc. Needless to say that an apprentice is not entitled for those benefits.

11.Adding circumstance in the instant case was that the petitioner company has terminated his services due to his long absence. In the case of apprentices, no question of termination of service would arise. The contention put forth by the learned Counsel for the petitioner that a person whose services has been terminated, cannot ask for permanent status cannot be countenanced. An employee whose services was terminated cannot maintain an application for permanent status before the concerned

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authority after an order of dismissal was made. But, in the instant case, pending the application for permanent status, the services of the second respondent was terminated by the petitioner company. Under the circumstances, such contention cannot be countenanced. Apart from this, the termination of the services of the second respondent by the petitioner would clearly indicate that he was an employee. Had he not been an employee as contended by the petitioner's side, there was no need or necessity for terminating his services.

12.Added further, in the instant case, the application made by the second respondent seeking for permanent status, was pending before the Deputy Chief Inspector of Factories. Pending the same, his services was terminated. Challenging the termination, another industrial dispute has been raised before the Labour Court. Those proceedings are separate and independent, and one has nothing to do with the other. Thus, it would be quite clear that he was only a permanent employee and not an apprentice as contended by the petitioner's side. The order of the authority below does not require any interference. Hence, this writ petition is dismissed. No costs. Consequently, connected MPs are also dismissed.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

nsv/

To:

1.The Deputy Chief Inspector of Factories
Division II, Vellore

1 cc To Mr.S.T.Varadarajulu, Advocate, SR.68580.
1 cc To The Government Pleader, SR.69036.

WP No.4222 of 2007

VSV(CO)
RVL 26.11.2007

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